IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3205 of 2005

Union of India & ors. Petitioners
Vs.
Bhanudas Mahadeo Walajkar Respondent

Mr.V.S.Masurkar with Mrs.N.V.Masurkar i/b. Mr.S.S. Sarkar for petitioners.

Mr.D.J.Deshmukh for respondent.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

September 12, 2006.

P.C.

1. Heard Mr.Masurkar, the learned Additional Standing Counsel for the petitioners and Mr. Deshmukh, the learned counsel for the respondent - employee. This petition filed under Articles 226 and 227 of the Constitution assails the judgment and order of the Central Administrative Tribunal (Single Bench) passed in O.A. No.516 of 2003 on 19/11/2004 filed by the present respondent.

2. It was claimed by the respondent before the Tribunal that he was appointed as LDC w.e.f. 7/5/1988 and was appointed to the post of UDC w.e.f. 1/8/1991. He was drawing basic pay of Rs.1025/- in the post of LDC w.e.f. 1/8/1991 and his pay was refixed at Rs.1240/- per month in October 1997. This

pay fixation for the period from August 1991 to September 1997 for which he was paid arrears was found to be illegal and a recovery of Rs.60,490/- was ordered and a further recovery of Rs.1680/- p.m. was started from pay of the applicant from January 2003 so as to recover the excess amount paid to him on account of wrong pay fixation. The employers filed reply before the Tribunal and opposed the application. However, the Tribunal took the view that the wrong pay fixation cannot be attributed to any fault of the employee and that the Department was justified in reviewing the pay fixation but it could not proceed to recover the difference in salary already paid to him for the period from August 1991 to September 1997. In this regard the Tribunal took support from the judgments of the Apex Court in the case of P.H. Reddy & ors. vs. National Institute of Rural Development & ors. **[JT 2002 (2) SC 483]** and in the case of O.K. Udayasankaran & ors. v. Union of India & ors. **[AIR 1996 SC 1901]** and allowed the application.

3. The respondent has filed affidavit-in-reply and opposed this petition. Mr.Masurkar, the learned Additional Standing Counsel for the petitioners has

placed on record a copy of the representation submitted by the respondent - employee on 22/4/1997 in support of his arguments that the revision in pay fixation ordered in October 1997 was on the basis of the representation submitted by the petitioner himself and it was not done suo motu by the present petitioners. He also submitted that the respondent's case could not be compared with cases of Mr.Reddy and Mr. Udaysankaran (Supra) as the petitioner was not reemployed on retirement from the earlier service under the Union of India or any of the public undertakings like the Life Insurance Corporation etc.

4. We have noticed that the representation dated 22/4/1997 was not placed before the Tribunal nor the petitioner had in their reply before the Tribunal referred to the said representation and pointed out that the revision of the petitioner's pay done in October 1997 was on the basis of his own representation and not suo motu by the Postal Department. This is an important facet of the case which was not placed before the Tribunal and, therefore, it would be appropriate that the case is remitted to the Tribunal for fresh consideration. Undoubtedly the present petitioners will have to

amend their reply and thereafter give time to the original applicant to file rejoinder.

5. Hence the petition is partly allowed and the impugned order is hereby quashed and set aside. Original Application No.516 of 2003 is restored to the file of the Central Administrative Tribunal, Mumbai Bench and the same will have to be heard and decided afresh after the Postal Department amends its reply. The amended reply shall be filed within a period of four weeks from today and the rejoinder of the original applicant shall be placed before the Tribunal within a period of two weeks thereafter. On remand the Original Application to be heard and decided finally by 31st December 2006.

6. Rule is made absolute accordingly with no order as to costs.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE